

REMARKS

Claims 16-31 and 50-56 were pending in this application when the present Office Action was mailed (October 21, 2005). Claims 16 and 53 have been amended and claims 50 and 54 have been cancelled. Accordingly, claims 16-31, 51-53, 55 and 56 are currently pending.

In the October 21, 2005 Office Action, claims 16-31 and 50-56 were rejected. More specifically, the status of the application in light of the present Office Action is as follows:

(A) Claims 16-19, 30, 31, 50, 51 and 53-55 stand rejected under 35 U.S.C. § 102(e) as being anticipated by U.S. Patent No. 6,725,094 to Saberski ("Saberski");

(B) Claims 20-27 stand rejected under 35 U.S.C. § 103(a) as being unpatentable over Saberski;

(C) Claims 28 and 29 stand rejected under 35 U.S.C. § 103(a) as being unpatentable over Saberski in view of U.S. Patent No. 6,463,328 to John et al. ("John"); and

(D) Claims 52 and 56 were indicated to be rejected, but no basis for the rejection was provided.

The undersigned attorney wishes to thank the Examiner for engaging in a telephone interview on January 5, 2006. This paper constitutes applicants' summary of the January 5, 2006 telephone interview. During the telephone interview, claims 1 and 50, as well as the Saberski reference were discussed. As a result of the interview, the Examiner agreed that claim 1 would be allowable over the applied references if amended to include the features of claim 50, for at least the reason that Saberski does not disclose or suggest subthreshold stimulation. The Examiner further agreed that claim 53 would be allowable if amended in a similar fashion to include the features of claim 54. The following remarks reflect this agreement.

A. Response to the Section 102 Rejections

Claim 16 has been amended to include the features of claim 50. In light of the agreement between the undersigned attorney and the Examiner referred to above, the Section 102 rejection of claim 16 on the basis of Saberski should be withdrawn. Claim 16 has been further amended to clarify the antecedent basis of the claim term "therapy electrode." Accordingly, the Section 102 rejection of claim 16 should be withdrawn and claim 16 should be allowed.

Claims 17-19, 30, 31 and 51 depend from claim 16. Accordingly, the Section 102 rejections of these claims should be withdrawn for the foregoing reasons and for the additional features of these dependent claims. Claim 50 has been cancelled, and accordingly the Section 102 rejection of claim 50 is now moot.

Claim 53 has been amended to include the subject matter of claim 54, and to clarify the antecedent basis of an element of the claim. As agreed to by the Examiner during the January 5, 2006 telephone interview, the outstanding Section 102 rejection of claim 53 should accordingly be withdrawn.

Claim 55 depends from claim 53. Accordingly, the Section 102 rejection of claim 55 should be withdrawn. Claim 54 has been cancelled, and accordingly the Section 102 rejection of claim 54 is now moot.

B. Response to the Section 103 Rejections on the Basis of Saberski

Claims 20-27 were rejected under Section 103 on the basis of Saberski. These claims depend from claim 16, which, as indicated above, is patentable over the applied references, including Saberski. Therefore, the Section 102 rejections of claims 20-27 should be withdrawn for the reasons identified above and for the additional features of these claims.

C. Response to the Section 103 Rejections on the Basis of Saberski and John

Claims 28 and 29 were rejected under Section 103 as being unpatentable over Saberski and John. Claims 28 and 29 both depend from claim 16 which, as indicated above, is allowable over the applied references. Accordingly, for the reasons identified

above and for the additional features of these claims, the Section 103 rejections of claims 28 and 29 should be withdrawn.

D. Status of Claims 52 and 56

Claims 52 and 56 were indicated on the Office Action Summary (Form PTOL-326) to be rejected, but no explicit basis of rejection was provided. However, in light of the fact that claim 52 depends from claim 16 and claim 56 depends from claim 53, any rejections of these claims should be withdrawn for the foregoing reasons and for the additional features of these dependent claims.

E. Information Disclosure Statements

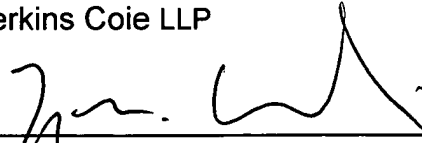
Applicants filed an Information Disclosure Statement (IDS) with the Patent Office on January 27, 2005, but have not yet received an indication that the Examiner has initialed these references. A review of the PAIR database indicates that the non-patent literature and foreign patent references identified in the IDS have not been scanned. Accordingly, applicants enclose a Resubmission of this IDS, including the references.

F. Conclusion

In view of the foregoing, the pending claims comply with 35 U.S.C. § 112 and are patentable over the cited art. The applicant accordingly requests reconsideration of the application and a Notice of Allowance. If the Examiner has any questions or believes a telephone conference would expedite prosecution of this application, the Examiner is encouraged to call the undersigned at (206) 359-3257.

Respectfully submitted,

Perkins Coie LLP

A handwritten signature in black ink, appearing to read 'John M. Wechkin', is written over a horizontal line.

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